IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN RE:	)	
	)	BK 16-81243
PLANET MERCHANT PROCESSING,	)	
INC.,	)	
	)	
Debtor.	)	

CREDITORS' MOTION FOR EXAMINATION OF DEBTOR, PLANET GROUP, INC., WEST PARTNERS, LLC, AND RAYMOND JAMES & ASSOCIATES, INC. PURSUANT TO FED. R. BANKR. P. 2004, NOTICE PURSUANT TO NEB.R.BANKR.P. 9013-1 AND CERTIFICATE OF SERVICE

On February 7, 2017, the Court granted the Debtor's Motion to Convert Case to Chapter 7 (Doc. 227) and thus dissolved the Committee of Unsecured Creditors. The Court also entered an Order Mooting the Motion for 2004 Examination filed by Committee of Unsecured Creditors (Doc. 228). Believing examination of these issues remains necessary, the four former members of the Committee of Unsecured Creditors, namely TSYS Merchant Solutions, LLC; First American Payment Systems, L.P.; EVO Merchant Services, LLC; and, WORLDPAY US, Inc. have now retained R. J. Shortridge and Perry, Guthery, Haase & Gessfored, P.C., L.L.O. ("Counsel") to represent them on behalf of their joint interest in renewing the request for 2004 examinations and the production of certain documents.

Accordingly, TSYS Merchant Solutions, LLC; First American Payment Systems, L.P.; EVO Merchant Services, LLC; and, WORLDPAY US, Inc. ("Creditors"), by and through the undersigned counsel, hereby move the Court for an Order under Bankruptcy Rule 2004 authorizing the Creditors to issue subpoenas to obtain documents from and conduct examinations of the following:

a. Designated corporate representative of the Debtor;

b. Designated corporate representative of Planet Group, Inc. ("Planet Group");

c. Designated company representative of West Partners, LLC ("West Partners"); and

d. Designated corporate representative of Raymond James & Associates, Inc ("Raymond James").

In support of these requests, the Creditors state as follows:

Legal Authority

1. Federal Rule of Bankruptcy Procedure 2004 provides that "on motion of any party in interest, the Court may order the examination of any entity" and may compel the production of documents. FED. R. BANKR. P. 2004(a), (c).

2. A Rule 2004 examination and production of documents may relate "to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." FED. R. BANKR. P. 2004(b).

3. The scope of a Rule 2004 examination and request for production of documents is "extremely broad" and its purpose is to determine the condition, extent, and location of the Debtor's estate in order to maximize distribution to unsecured creditors. In Re Lufkin, 255 B.R. 204, 208 (Bankr. E.D. Tenn. 2000) (citations omitted); see also In Re D.A.K. Ranch, Inc., 1990 Bankr. LEXIS 2342 (Bankr. D. Neb. 1990) ("The duty of the debtor to disclose everything, all of the debtor's assets and liabilities, is so important and so fundamental to a bankruptcy case it cannot be overstated. The Code envisions knowledgeable creditor participation in the bankruptcy process.")

4. Despite the fact the Creditors hold unsecured claims against the Debtor in excess of $16 million dollars, the Debtor has suggested a fast-track auction all of its assets starting at $50,000. (Doc. 194 ¶7).

5. The information learned by the Creditors will be shared with the Chapter 7 Trustee to aid in the orderly liquidation of the Debtor.

ARGUMENT

6. The Debtor filed its voluntary Chapter 11 bankruptcy petition on August 17, 2016. (Doc. 1).

7. Apparently, in response to the Creditors' desire for full and fair disclosure prior to any settlement discussions, the Debtor filed a Motion to Convert this case to Chapter 7 on January 5, 2017. (Doc. 199).

8. To date, the Debtor has failed to provide the Creditors with certain key financial information. For example, the Debtor has not provided a detailed listing of all equipment owned by the Debtor, and where such equipment is located.

9. Furthermore, despite claims that the Debtor is worth nearly $50 million dollars, (Doc. 180 ¶ 3(c) and (d)), the Debtor refuses to disclose basic information regarding the Debtor's previous attempts to sell the Debtor's business as a going concern behind claims of "confidentiality," (Doc. 180 ¶ 3(g) and (h)).

10. The Debtor also has failed to adequately disclose: (a) the Debtor's conflicts of interests and fiduciary relationships with Planet Group; (b) the Debtor's conflicts of interests and fiduciary relationships with West Partners; (c) the legal and factual support for the Debtor's assertion that it has no employees; and (d) the justification for the Debtor's sudden and complete abandonment of any attempts to market or sell the Debtor as a going concern.

11. Despite having no customers or disclosed prospects for revenue, the Debtor has maintained a workforce varying from 26 to 8 employees. The Creditors should be allowed to examine whether the Debtor or any of its affiliates have engaged in discussions regarding the sale of all or part of the Debtor's assets to a third party. In fact, the Debtor has admitted that "[i]n November of 2015, the Debtor, along with [Debtor's parent company and sole shareholder] Planet Group and the majority shareholder of Planet Group [West Partners], engaged investment

banker Raymond James & Associates, Inc. ("Raymond James") to assist them in selling the business of the Debtor." (Doc. 110, ¶14) Interestingly, even after expiration of its contract, Raymond James has continued to have discussions with potential buyers on behalf of Planet Group and its parent West Partners, but has received no "firm offers" from any interested parties. (Doc. 112, ¶¶4, 6). Exploration of these discussions with potential third party buyers is essential to maximizing any potential distributions to unsecured creditors. In Re Lufkin, 255 B.R. at 208. Rather than a fast-track $50,000 cash auction, the Creditors should be allowed to investigate the progress and discussions the Debtor and its affiliated entities have had with potential buyers. Such examination is further justified by the Debtor's insiders' substantial economic interest in directing all value to its parent company, Planet Group. Indeed, if sales proceeds from a third party transaction occur in this Bankruptcy, Planet Group—if entitled to any distribution at all—would have to share such proceeds with the members of Creditors. Furthermore, Planet Group is at risk of having its claims equitably subordinated or re-characterized, even further diluting any potential recovery. On the other hand, if Planet Group can fast-track acquisition of the Debtor's assets, Planet Group would try to keep 100% of any subsequent sales proceeds from a sale to a third party buyer.

12. The Creditors further should be allowed to examine the alleged relationship between the Debtor and Planet Group, more particularly, Planet Group's assertions that the Debtor has no employees. (Doc. 172 Disclosure Statement). Indeed, at the § 341 hearing, the Debtor's president testified: "I think of these employees as – these people as employees. From a legal aspect I am not really sure how they're classified." (Doc. 181 8:6-7). Further adding to the confusion, the Debtor's president also stated: "And so the understanding is those employees do work – the PMP employees work on PMP business. And the fact that they're employed by the parent [Planet Group], it's a convenient way to do it, and it's an economical way to do it." (Doc.

181 45:7-11) (emphasis added). When further pressed to try to identify employees who worked on the Debtor's software, Debtor's president engaged in the following exchange: "Q. Okay. Name as many as you can of the other people that are working for PMP. A. Do I have to do that?" (Doc. 181 49:7-9). Later, Debtor's counsel intervened and stated: "I am instructing him not to answer or provide information relating to the identity of the employees, the names." (Doc. 181 50:8-10).

13. Further adding to the confusion is the fact that the Debtor entered into numerous contracts giving the impression that the Debtor had employees performing the various contractual services. For example, at Doc. 115-1, page 15, Section 8.2(a), the contract provides: "Unless specifically agreed otherwise by Customer in each instance, Planet [Merchant Processing] shall only assign as Planet Personnel employees of Planet [Merchant Processing] and those limited non-employees of Planet [Merchant Processing] who qualify as "independent contractors" or "temp employees…"

14. Now the Debtor and its parent company, Planet Group, are trying to siphon a significant value associated with the employees solely to the parent shareholder, Planet Group. In these circumstances, the Creditors should be allowed to inquire and be provided with some basic documentation such as employment agreements, W-2's, intra-company minutes or agreements etc., which allegedly support Planet Group's claims that it is the true employer of all the employees. Moreover, the Creditors should be allowed to explore whether any of these "employees" were transferred by the Debtor to its insider and parent shareholder within the one year prior to the bankruptcy filing.

WHEREFORE, the Creditors request an Order from this Court authorizing the Creditors and their counsel to issue subpoenas as follows:

a. With Respect to Debtor:

i. Requiring Debtor to produce the documents requested in the Requests for Production of Documents identified on Exhibit "A" hereto within 21 days of the Court's Order granting this Motion; and

ii. Authorizing an examination of Debtor’s designated corporate representative regarding the documents the Debtor produces, as well as any other information relating to the acts, conduct, or property or to the liabilities and financial condition of Debtor within 21 days of the Court's Order granting this Motion.

b. With Respect to Planet Group:

i. Requiring Planet Group to produce the documents requested in the Requests for Production of Documents identified on Exhibit "B" hereto within 21 days of the Court's Order granting this Motion; and

ii. Authorizing an examination of Planet Group’s designated corporate representative regarding the documents Planet Group produces, as well as any other information relating to the acts, conduct, or property or to the liabilities and financial condition of Debtor within 21 days of the Court's Order granting this Motion.

c. With Respect to West Partners:

i. Requiring West Partners to produce the documents requested in the Requests for Production of Documents identified on Exhibit "C" hereto within 21 days of the Court's Order granting this Motion; and

ii. Authorizing an examination of West Partners' designated company representative regarding the documents West Partners produces, as well as any other information relating to the acts, conduct, or property or to the liabilities and financial condition of Debtor within 21 days of the Court's Order granting this Motion.

d. With Respect to Raymond James:

i. Requiring Raymond James to produce the documents requested in the Requests for Production of Documents identified on Exhibit "D" hereto within 21 days of the Court's Order granting this Motion; and

ii. Authorizing an examination of Raymond James's designated corporate representative regarding the documents Raymond James produces, as well as any other information relating to the acts, conduct, or property or to the liabilities and financial condition of Debtor within 21 days of the Court's Order granting this Motion.

DATED: March 1, 2017.

TSYS MERCHANT SOLUTIONS, LLC;
FIRST AMERICAN PAYMENT SYSTEMS, L.P.;
EVO MERCHANT SERVICES, LLC; and,
WORLDPAY US, INC., Creditors

BY: PERRY, GUTHERY, HAASE
& GESSFORD, P.C., L.L.O.

BY: */s/ R.J. Shortridge*

R. J. Shortridge (#20784)
Derek A. Aldridge (#23541)
233 South 13th Street, Suite 1400
Lincoln, Nebraska 68508
Telephone: (402) 476-9200
Facsimile: (402) 476-0094
rshortridge@perrylawfirm.com
daldridge@perrylawfirm.com

NOTICE UNDER NEB.R.BANKR.P. 9013-1

YOU AND EACH OF YOU ARE HEREBY NOTIFIED that TSYS Merchant Solutions, LLC; First American Payment Systems, L.P.; EVO Merchant Services, LLC; and, WORLDPAY US, Inc., creditors in the above-captioned case has filed a Motion for Examination Concerning Acts, Conduct and Property of the Debtor pursuant to FED. R. BANKR. P. 2004 with the United States Bankruptcy Court for the District of Nebraska. Copies of this Motion will be provided to parties-in-interest upon request.

YOU ARE FURTHER ADVISED this Notice is being furnished to you pursuant to Nebraska Rule of Bankruptcy Procedure 9013-A and that any objection, resistance or request for hearing with respect to the above-referenced pleading must be filed on or before **March 22, 2017**, with the Clerk of the Bankruptcy Court, 111 South 18th Plaza, #1125, Omaha, Nebraska 68102, with a copy to R.J. Shortridge, PERRY, GUTHERY, HAASE & GESSFORD, P.C., L.L.O., 233 South 13th Street, Suite 1400, Lincoln, Nebraska 68508.

If no objection or resistance is timely filed and served the Court will enter an Order granting the request.

TSYS MERCHANT SOLUTIONS, LLC;
FIRST AMERICAN PAYMENT SYSTEMS, L.P.;
EVO MERCHANT SERVICES, LLC; and,
WORLDPAY US, INC., Creditors

BY: PERRY, GUTHERY, HAASE
& GESSFORD, P.C., L.L.O.

BY: */s/ R.J. Shortridge*
R. J. Shortridge (#20784)
Derek A. Aldridge (#23541)
233 South 13th Street, Suite 1400
Lincoln, Nebraska 68508
Telephone: (402) 476-9200
Facsimile: (402) 476-0094
rshortridge@perrylawfirm.com
daldridge@perrylawfirm.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 1, 2017, he caused the foregoing to be electronically filed with the Clerk of the United States Bankruptcy Court for the District of Nebraska using the CM/ECF system, which sent notification of such filing to the following:

Brandon R. Tomjack	J.P. Sam King
T. Randall Wright	Erin R. Robak
Jerry L. Jensen	John D. Stalnaker
Patricia Fahey	Thomas D. Stalnaker
Jason W. Grams	Andre R. Barry
Robert W. Jones	Richard P. Garden, Jr.
Frank M. Schepers	Jeffrey T. Wegner
James J. Niemeier	Frank N. White
James Fitzgerald	Michael J. Whaley

The undersigned further certifies that on March 1, 2017, he caused a copy of the foregoing to be mailed by United States mail, postage prepaid, to the following non CM/ECF participants:

Planet Merchant Processing, Inc.
407 N. 117th Street
Omaha, NE 68154

Paul K. Ferdinands
Mark M. Maloney
King & Spalding, LLP
1180 Peachtree Street
Atlanta, Georgia 30309-3521
Attorneys for EVO Merchant Services, LLC

/s/ R.J. Shortridge
R. J. Shortridge